

20 NOVEMBER 1946

I N D E X
of
WITNESSES

Prosecution's Witnesses

	<u>Page</u>
Ballantine, Joseph W. (resumed)	10904
Cross by Mr. Blakeney (continued)	10904

I N D E X
of
EXHIBITS

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
92		1246	Excerpt from the Department of State's publication "Foreign Relations" Vol. I, (pp.709-710): "Disposition of Japanese Forces" and the document headed "From Japanese Ambassador NOMURA to the Secretary of State dated 7 November 1941"	10914	10918

1 Wednesday, 20 November, 1946

2 - - -

3 INTERNATIONAL MILITARY TRIBUNAL
4 FOR THE FAR EAST
5 Court House of the Tribunal
6 War Ministry Building
7 Tokyo, Japan

8 The Tribunal met, pursuant to adjournment,
9 at 0930.

10 - - -

11 Appearances:

12 For the Tribunal, same as before with the
13 exception of the HONORABLE R. B. PAL, Member from
14 India, not sitting.

15 For the Prosecution Section, same as before.

16 For the Defense Section, same as before.

17 The Accused:

18 All present except OKAWA, Shumei, who is
19 represented by his counsel.

20 - - -

21 (English to Japanese and Japanese
22 to English interpretation was made by the
23 Language Section, IMTFE.)
24
25

BALLANTINE

CROSS

G
r
e
e
n
b
e
r
g
&
B
a
r
t
o
n

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 - - -

5 J O S E P H W. B A L L A N T I N E, called as a
6 witness on behalf of the prosecution, resumed
7 the stand and testified as follows:

8 CROSS-EXAMINATION

9 BY MR. BLAKENEY (Continued):

10 Q At yesterday's recess, we were just starting
11 to discuss the China question. I was commencing a
12 question which I will ask the reporter to repeat.

13 (Whereupon, the official court
14 reporter read as follows:)

15 "Q Now, in order to attempt to define clearly
16 the problem involved, I call your attention to the
17 following language on page 14 of your affidavit, para-
18 graph 3, that: 'The immutable policy of the Japanese
19 Government to ensure the stability of East Asia was
20 predicated upon establishing at the outset a complete
21 Japanese military and economic stranglehold over
22 China, calling for Japanese control over strategic
23 Chinese industries and facilities, referred to
24 euphemistically in terms such as 'economic cooperation
25 with China,' and retention in large areas of China

BALLANTINE

CROSS

1 for an indefinite period of large Japanese garrisons
2 to protect Japan's holdings.'"

3 Q (Continuing) Now, you refer in your affi-
4 davit on a number of occasions to the fact that this
5 policy, as you say, was immutable, that from it the
6 Japanese never budged, and that for them to speak of
7 making the utmost concessions from it is monstrous.
8 Am I correct so far?

9 A That is correct.

10 Q Now, first as to the question of Japanese
11 control of Chinese industries: This actually merged,
12 did it not, in the conversations into the discussion
13 of non-discrimination in international trade in
14 general?

15 A Well, it merged in the sense it is all part
16 of the large question. The fact of the matter was
17 that these controls that Japan exercised -- these
18 special companies with monopolistic rights which
19 were given title under the regime -- Japanese spon-
20 sored regimes -- had monopolized industry. Those
21 operations in that way frustrated the operation of
22 free enterprise -- competitive enterprise. As a
23 result, American trade and enterprise in those areas
24 were stifled and could only operate in very very
25 narrow grooves, if at all.

BALLANTINE

CROSS

1 Q Yes. Well, all I am asking you now is
2 whether that question was not discussed as one of the
3 aspects of unrestricted commercial intercourse in
4 general.

5 A The best explanation of the American Govern-
6 ment's position on that is contained in a memorandum
7 handed to the Japanese Ambassador on November 15,
8 1941. The whole story is there.

9 Q Well, I am afraid we do not quite understand
10 each other. I am not asking you for the American
11 position; I am asking you whether, as a mechanical
12 thing in these conversations, this was not discussed
13 as one of the aspects, perhaps the most important
14 aspect, of the question of unrestricted internation-
15 al trade in general -- mechanically speaking, I mean.

16 A In the memorandum in question, the clear
17 relationship of the subject as a whole -- the parts
18 are given in that memorandum.

19 Q Yes. Well, I think we are in agreement
20 there, and we will come back to that. I want to set
21 that aside for now and return to it.

22 The other question in connection with China
23 is that of stationing of Japanese troops there, is
24 it not?
25

A That question, also the demand that the

BALLANTINE

CROSS

1 Japanese made that we withdraw aid from Chiang Kai-
2 shek.

3 Q Yes. Now, on the question of stationing of
4 Japanese troops in China, had the Department of State
5 any objection on principle to the stationing of
6 foreign troops in certain parts of China for pro-
7 tecting foreign interests and maintaining order?

8 A There were certain treaty rights that
9 foreign powers had acquired, Boxer Protocol, for
10 example. We were trying to get gradually away from
11 all of that. In our proposal of November 26 we re-
12 ferred to getting away from that.

13 Q As a matter of fact, was not the United
14 States one of the nations which was maintaining
15 troops in China under the Boxer Protocol?

16 A That is correct. We maintained about --
17 Legation Guards to the extent of about a thousand --
18 between a thousand and, at a maximum, two thousand,
19 I believe.

20 Q But, if I understand correctly, the object-
21 ion to the Japanese proposal in regard to stationing
22 of troops in China was on the grounds of the number
23 of troops, the extent of the area in which they were
24 to be stationed, and the duration of their stay.

25 A The objection was that ever since 1936

BALLANTINE

CROSS

1 Japan had made this demand, and it is one of the
2 causes that brought on the extended hostilities. If
3 we were going to have a stabilizing peace in the Far
4 East, it was necessary to have such arrangements as
5 Japan made entered into by amicable negotiations
6 with China.

7 Q Well, did the Department of State object
8 to the Japanese making an amicable arrangement with
9 China for the stationing of troops to protect their
10 legitimate interests in China?

11 A There were two points there: One was the
12 very great vagueness of the Japanese as to what they
13 wanted. The areas were indeterminate; the number of
14 troops were indeterminate; the length of time was
15 indeterminate; there was no clear-cut expression of
16 what they wanted. It was a blank check.

17 THE PRESIDENT: Do pause at the end of each
18 sentence, Mr. Ballantine. Even if the interpreters
19 do succeed in repeating what you say without any
20 interruption, it does impose a great strain on them,
21 and they get tired quickly under those conditions.

22 A (Continuing) The second point was the well
23 known fact that the Chinese Government had shown
24 itself opposed to accepting any such provision.

25 Q All right. Now, that vagueness about

BALLANTINE

CROSS

1 details is what I was asking you about. Is it true
2 that, so far as these conversations were concerned,
3 your first official intimation of the extent of the
4 Japanese claims was given you by Colonel IWAKURO;
5 that is, the explanation by him referred to on page
6 8, paragraph 2 of your affidavit?

7 A That is correct. But, two or three days
8 later the Japanese Ambassador had a talk with the
9 Secretary of State.

10 Q Yes, I understand that. But, now, what I
11 want to ask you is, is it these terms explained by
12 Colonel IWAKURO from which you say the Japanese
13 never budged?

14 A Certainly, what Colonel IWAKURO said to me
15 was never withdrawn.

16 Q I am not asking you whether his words were
17 withdrawn; I am asking you whether the Japanese in
18 any subsequent proposals receded from the position
19 there stated by him.

20 A To the best of my knowledge, they did not.

21 Q Well, let us see a moment: One of Colonel
22 IWAKURO's points, I believe, was that Japanese troops
23 were to remain in North China and Inner Mongolia to
24 defend against a communist menace; is that correct?

25 A That is correct.

BALLANTINE

CROSS

1 Q And for the additional purpose of maintain-
2 ing order in areas adjacent to Japan in the sense of
3 geographical proximity.

4 A That's what he said.

5 Q It was a fact, was it not, that communistic
6 activities did exist in those areas and that the
7 Central Government of China was unable to maintain
8 order?

9 A It is true that communistic activities did
10 exist. I would not want to pass on whether the
11 Chinese Government had an untrammelled opportunity
12 to maintain order itself.

13 Q Well, with the knowledge which the State
14 Department possessed of the conditions as they then
15 were in that area, surely the principle of maintain-
16 ing Japanese troops there to protect whatever legiti-
17 mate interests the Japanese had must have been accept-
18 able.

19 A There was a great deal of confusion as to
20 what were legitimate interests and what were inter-
21 ests acquired as a result of the forcible occupation
22 of North China.

23 Q Yes. That is why I used the word "legitimate."
24 I mean legitimate according to the definition of the
25 Department of State.

BALLANTINE

CROSS

1 A That's a very difficult question to answer.
2 It is a question of whether you should maintain
3 troops for protecting interests. The Boxer Protocol
4 didn't make any provision for that other than main-
5 taining contact with the legations and protecting
6 the legations.

7 Q Well, let's come to the details of the
8 problem: What was the United States position as
9 expressed during these conversations on the time
10 limit in connection with stationing of Japanese
11 troops in China?

12 A Our position was that we expected to allow
13 the Japanese to have a reasonable time under exist-
14 ing conditions to effect evacuation of the large
15 forces in China.

16 Q Very good. Now, there was objection also,
17 was there not, to the number of troops? Perhaps
18 that is not very clear. I mean the number of troops
19 which, as explained by Colonel IWAKURO, would prob-
20 ably be retained in China.

21 A We did not think that, if we had explained
22 to Chiang Kai-shek what Colonel IWAKURO wanted, that
23 Chiang Kai-shek -- the Chinese Government would be
24 willing to accept any such terms as that.

25 Q The number of Japanese troops in China, of

BALLANTINE

CROSS

1 course, was abnormally large at that time because
2 there was a war in progress, was it not?

3 A Yes.

4 Q Now, did the Department of State recognize
5 from the outset of these conversations that, owing
6 to internal conditions in Japan, it was to be ex-
7 pected that the reaching of any agreement on this
8 point would be very difficult?

9 A The Secretary of State explained time and
10 again that he was prepared to be patient.

11 Q Therefore, I suppose it is fair to state
12 that the Department would not have entered upon these
13 conversations at all had it been determined to insist
14 on immediate unconditional withdrawal of all troops.

15 A We entered upon the conversations because
16 the Japanese Government had informed us that they
17 wanted a peaceful settlement covering the entire
18 Pacific area.

19 Q Yes. But I mean practically speaking --
20 not discussing the rights or wrongs, but practically
21 speaking, the Department of State surely must have
22 recognized from the very beginning that it would be
23 impossible to get any agreement for immediate un-
24 conditional withdrawal of all troops. That you knew,
25 did you not?

BALLANTINE

CROSS

1 A Japanese had told us at the outset of these
2 difficulties, and you will note in our proposal of
3 June 21 we had the terms under there, "Subject to
4 Further Discussion." We were prepared to explore
5 the subject with them thoroughly and reasonably.

6 Q Yes. Well, I think we are in agreement.
7 You say you were prepared to explore the subject of
8 terms of withdrawal, and that's what I mean, if you
9 were not insisting on unconditional, immediate,
10 total withdrawal. That is correct, is it not?

11 A That's right.

12 Q Now, as I understand it, little progress
13 was made on this point down to the beginning of
14 November, approximately.

15 A That is correct.

16 Q It is true you do say on page 11 of your
17 affidavit, paragraph 4, that "a new draft of pro-
18 posals presented by the Japanese on the 6th of
19 September was much narrower than the last preceding
20 document." Inasmuch, however, as that last preceding
21 document was the assurance of the 27th of August
22 which does not mention this question, I assume that
23 you do not mean that the September proposal narrowed
24 the Japanese position on this point.

25 A I was considering the two documents as a

BALLANTINE

CROSS

1 whole.

2 Q Yes. Now, yesterday we discussed the pro-
3 posal handed by the Japanese Ambassador to the
4 Secretary of State on the 7th of November, 1941.

5 A I don't recall that we did. I thought we
6 discussed the proposal that he made to the President
7 on November 10.

8 Q Yes. But, on the 10th of November, did not
9 the Ambassador discuss with the President the same
10 proposal which he had presented to the Secretary of
11 State on the 7th of November?

12 A I would have to refresh my memory on the
13 November 7 proposal.

14 MR. BLAKENEY: I now tender for identifica-
15 tion an excerpt from the Department of State's publi-
16 cation "Foreign Relations," Volume I, pages 709 - 710.

17 CLERK OF THE COURT: Defense's document,
18 entitled "Disposition of Japanese Forces," and the
19 document headed "From Japanese Ambassador NOMURA to
20 Secretary of State, November 7, 1941," is given
21 exhibit No. 1246 for identification only.

22 (Whereupon, the document above re-
23 ferred to was marked defense's exhibit No.
24 1246 for identification.)
25

BALLANTINE

CROSS

1 Q I now ask that you be handed exhibit 1246,
2 Mr. Witness, and that you examine it and state if
3 you can whether this is the document under discussion.

4 (Whereupon, exhibit No. 1246 was
5 handed to the witness.)

6 A Yes, that is correct.

7 Q You testified yesterday that no mention of
8 this proposal was made in your affidavit for certain
9 reasons, and I think particularly because you felt it
10 of no particular importance in the sum total of the
11 conversations.

12 A If I recall correctly, I was referring to
13 the November 10 document.

14 Q Perhaps I misunderstood you. I thought you
15 just told me that this document handed to the
16 Secretary of State on the 7th of November was the
17 same as the one handed to the President on the 10th
18 of November.

19 A I didn't mean to say that. I meant to say
20 I understood you to say that the November 10th docu-
21 ment was the same as that referred -- was referred to
22 on the memorandum given to the Secretary of State on
23 November 7th.

24 Q Well, tell me then, if you will, why you
25 omit mention of this document, exhibit 1246, from

BALLANTINE

CROSS

1 your affidavit.

2 A For two reasons. One: Because while we
3 were giving consideration to this document, this
4 intercept of the Japanese Government of November 5 --
5 about November 5, I don't remember the exact date --
6 came in. That intercept made it clear that the re-
7 presentations being made to us on the troop question
8 were not being made in good faith. The second reason
9 is that you will note that in this proposal they in-
10 jected in the Island of Hainan, which was entirely
11 a new question, so instead of bringing us nearer
12 it injected a new question which left us just where
13 we were.

14 MR. BLAKEMORE: Yes. Well, I think this
15 proposal is of some interest on this question and I
16 now tender in evidence exhibit No. 1246, identified
17 by the witness.

18 MR. HIGGINS: I object to the offering of
19 evidence on the part of the defense at this time,
20 because the prosecution has not finished presenting
21 its case.

22 THE PRESIDENT: You overlooked for the time
23 being, I think, Mr. Higgins, that the defense counsel
24 is at the lectern cross-examining. He is not in-
25 terrupting you to put in evidence. In any national

BALLANTINE

CROSS

1 court he would be completely within his rights and
2 I do not see why he is not within them here.

3 MR. HIGGINS: Mr. President, I don't have
4 before me the Charter, but as I recall the Charter
5 sets out the order for the procedure here, and at
6 the conclusion of the prosecution's case then the
7 defense may present evidence.

8 THE PRESIDENT: The Charter, of course,
9 does not bear on this at all. It is the general
10 practice in every national court that I am aware of
11 for the defense to cross-examine and in the course
12 of so doing draw attention to documents. If the
13 witness being cross-examined acknowledges the docu-
14 ment it is tendered as a matter of course.

15 I have a note from a colleague from a
16 British Dominion, "if the cross-examination is
17 relevant, and this is, then documents may be ten-
18 dered to the witness and through him to the Court."
19 I completely agree. However, this is not a British
20 court or an American court and I will take the view
21 of my colleagues and, of course, carry it out.

22 MR. HIGGINS: May I say this, Mr. President,
23 we recognize the right of the defense to cross-examine
24 and have before the witness any document whether it
25 is in evidence before or not. For that reason I

BALLANTINE

CROSS

1 made no objection to the offering of the document for
2 identification and the subsequent cross-examination
3 of the witness on the basis of that document, but
4 the defense goes further than that and offers the
5 document itself in evidence.

6 THE PRESIDENT: We have the view in any
7 Australian or New Zealand court, I will confine it
8 to that --

9 MR. HIGGINS: Or American.

10 THE PRESIDENT: The document is admitted
11 on the usual terms.

12 CLERK OF THE COURT: Defense document here-
13 tofore described is given exhibit No. 1246 and ad-
14 mitted according to order of Court.

15 (Whereupon, the document previously
16 marked defense exhibit No. 1246 for identifi-
17 cation was received in evidence.)

18 MR. BLAKENEY: I do not desire to read it
19 at this time unless the Tribunal desires to hear it.

20 THE PRESIDENT: Well, it should go into the
21 transcript for our convenience. This is the time.

22 MR. BLAKENEY: I am sorry, sir, I do not
23 understand whether you mean to read it into the
24 transcript.

25 THE PRESIDENT: Read it, yes.

BALLANTINE

CROSS

1 MR. BLAKENEY: (reading):

2 "Document Handed by the Japanese Ambassador
3 (NOMURA) to the Secretary of State on November 7,
4 1941. (Tentative translation).

5 "DISPOSITION OF JAPANESE FORCES.

6 "(a) Stationing of Japanese forces in China
7 and the withdrawal thereof:"

8 THE PRESIDENT: Let me make sure. The wit-
9 ness acknowledges that this was handed by NOMURA
10 to the Secretary of State on that date? That is
11 the fact that makes it admissible.

12 MR. BLAKENEY: That is correct, is it not?

13 THE WITNESS: That is correct.

14 MR. BLAKENEY: I continue the reading:

15 "With regard to the Japanese forces that have
16 been despatched to China in connection with the China
17 Affair, those forces in specified areas in North
18 China and Mengchiang (Inner Mongolia) as well as
19 in Hainan-tao (Hainan Island) will remain to be
20 stationed for a certain required duration after the
21 restoration of peaceful relations between Japan and
22 China. All the rest of such forces will commence
23 withdrawal as soon as general peace is restored
24 between Japan and China, and the withdrawal will
25 proceed according to separate arrangements between

BALLANTINE

CROSS

1 Japan and China and will be completed within two
2 years with the firm establishment of peace and order.

3 "(B) Stationing of Japanese forces in French
4 Indo-China and the withdrawal thereof:

5 "The Japanese Government undertakes to guarantee
6 the territorial sovereignty of French Indo-China.
7 The Japanese forces at present stationed there will
8 be withdrawn as soon as the China Affair is settled
9 or an equitable peace is established in East Asia.

10 "PRINCIPLE OF NON-DISCRIMINATION.

11 "The Japanese Government recognizes the prin-
12 ciple of non-discrimination in international com-
13 mercial relations to be applied to all the Pacific
14 areas, inclusive of China, on the understanding that
15 the principle in question is to be applied uniformly
16 to the rest of the entire world as well."

17 BY MR. BLAKENEY: (Continued)

18 Q Now, Mr. Witness, is this the proposal
19 which you referred to on page -- I am sorry, I
20 withdraw that question.

21 Now, in this proposal also there is again no
22 specific mention of the time of withdrawal of troops,
23 the number of troops to remain, and the other points
24 which were giving concern in the conversations, is
25 there?

DALLANTINE

CROSS

1 A That is correct.

2 Q But were these points explained in the
3 conversations by the two Japanese Ambassadors?

4 A We had to read all their explanations in
5 the light of the instruction that was sent to Am-
6 bassador NOMURA.

7 Q Well, then, there were explanations given?

8 A Such explanations as were given are fully
9 there in the record. I don't recall exactly what
10 was said.

11 Q Well, do you recall, for example, that in
12 this conversation on the 18th of November with
13 Secretary Hull Ambassador NOMURA stated as follows:
14 In answer to the question of the Secretary how many
15 soldiers the Japanese wanted to retain in China the
16 Ambassador replied that possibly 90 per cent would
17 be withdrawn. Do you remember that?

18 A I recall that.

19 Q Secretary Hull then asked, did he not, how
20 long the remaining 10 per cent of the troops would
21 be stationed in China?

22 A I recall that too.

23 Q Do you recall the Ambassador's answer to
24 that?

25 A I would have to have my memory refreshed

BALLANTINE

CROSS

1 on what he said.

2 Q I ask you whether you remember that the
3 Ambassador gave no definite answer to that? Such,
4 I assure you, is the record.

5 A Well, that is correct, then.

6 Q Nevertheless, you of the Department of State
7 did know, did you not, what answer Ambassador NOMURA
8 would have given if he had been pressed on the point?
9 You knew what his instructions were from his home
10 government, did you not?

11 A That is correct.

12 Q And in connection with these intercepts of
13 Japanese diplomatic correspondence, let me ask you a
14 question or two. From what time had the Department
15 of State had access to such intercepted, decrypto-
16 graphed and translated messages?

17 A I don't recall definitely, but probably
18 at least as early as the spring of 1941.

19 Q That is to say, then, that throughout the
20 entire or substantially the entire course of these
21 conversations you had access to that material?

22 A I am not positive, but I think so.

23 Q So that during this period, or at all events
24 the latter part of it, you knew not only what the
25 Japanese Ambassador was saying to you, but you knew

B. LLANTINE

CROSS

1 what his government was authorizing or instructing
2 him to say, did you not?

3 A Well, in so far as we got intercepts. We
4 don't know what messages failed to be intercepted;
5 we don't know what messages he received by mail.
6 Other sources we don't know.

7 Q Then, in conducting the conversations on your
8 side, the Department of State's side, did you take
9 into account not only the formal conversations but
10 also your knowledge of the intercepted messages at
11 all times?

12 A The intercepted messages in general were
13 corroboratory evidence of what we generally knew
14 from other sources. Naturally, we had to take them
15 into consideration.

16 Q Did you yourself or other members of the
17 Department staff able to read them see the Japanese
18 texts of these messages, or did they come to you
19 only in English?

20 A They came to us only in English.

21 Q Then, to be quite specific, may I under-
22 stand that so far as you know no member of the De-
23 partment of State staff did read these messages in
24 Japanese.

25 THE PRESIDENT: Didn't he say they were

BALLANTINE

CROSS

1 tendered in English?

2 MR. BLAKENEY: He said they came to them
3 in English, but I wish, sir, to be quite specific that
4 in no other way were they read in Japanese.

5 THE PRESIDENT: They may never have been
6 in Japanese.

7 Q Do you know whether they were in Japanese
8 originally?

9 A Some of them were in Japanese I know.

10 Q And I repeat, if I may, so far as concerns
11 those which were in Japanese is it quite definite
12 that no member of the Department of State read them
13 and understood them in Japanese?

14 A Well, I can only speak to the best of my
15 knowledge and belief that at that time, during 1941,
16 there was no member of the Department of State that
17 was reading them, or did read any of them in Japanese.

18 THE PRESIDENT: Do you read Japanese?

19 THE WITNESS: I do.

20 THE PRESIDENT: Did you see any of them in
21 Japanese?

22 THE WITNESS: Not at that time.

23 THE PRESIDENT: But you didn't read them
24 in Japanese?

25 THE WITNESS: No.

BALLANTINE

CROSS

1 MR. BLAKENEY: (Continued).

2 Q Then to return to the question of stationing
3 of troops in China, from which we divaricated
4 momentarily, what, if you remember, did the Depart-
5 ment of State know at the time from the intercepted
6 correspondence was the instruction which Tokyo had
7 given Ambassador NOMURA with regard to what he should
8 say would be the period for which Japanese troops
9 should be stationed in China?

10 A It is a long time since I have refreshed my
11 memory on that particular telegram, but I think he
12 was told to give some agreeable explanation, some
13 reference to a vague period of years, but I don't
14 recall definitely at this moment.

15 THE PRESIDENT: We will recess for fifteen
16 minutes.

17 (Whereupon, at 1045, a recess was
18 taken until 1100, after which the proceedings
19 were resumed as follows:)
20
21
22
23
24
25

BALLANTINE

CROSS

W.
O.
L.
E.
A.
D
u
d
a

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Blakeney.

4 BY MR. BLAKENEY: (Continued)

5 Q Would it refresh your memory, Mr. Witness,
6 if I told you that the United States Government print
7 of the intercepted message, 4th of November, shows
8 that Ambassador NOMURA was instructed to answer that
9 such a period should encompass 25 years?

10 THE PRESIDENT: Mr. Chief of Counsel.

11 MR. KEENAN: Mr. President, solely for the
12 purpose of complying with the Charter for a speedy
13 trial, I object to this as being an attempt at this
14 time for the defense to untimely assert its defense
15 and invade the proper province of cross-examination.

16 THE PRESIDENT: What is the purpose of cross-
17 examination if it is not to invade the province of the
18 prosecution to the extent that the cross-examiner
19 is allowed to do so? Objections must be taken on
20 specific grounds. That is not one. It is overruled.

21 Q (Continuing) Please answer the question.

22 A It refreshes my memory to that extent.

23 Q When the explanation was given by Ambassador
24 NOMURA to Secretary Hull on this point, did Secretary
25 Hull consider it of insufficient interest to ask the

BALLANTINE

CROSS

1 Ambassador what the period would be?

2 A I do not know what is in the mind of the
3 Secretary, but I think that that intercepted message,
4 to understand the spirit of it, should be read as a
5 whole.

6 Q Well, leaving aside the question of bad faith,
7 as shown by the intercepted message which I am coming
8 to in a moment; was the period of 25 years considered
9 in itself unreasonable by the Department?

10 A We didn't consider each of these small points
11 individually. We considered the proposition as a
12 whole.

13 Q I do not quite understand how you consider
14 it as a whole without considering details; but consider-
15 ing it as a whole, did you consider the 25-year
16 period to be unreasonable?

17 A That would have to be taken into consideration
18 with the other elements in the situation -- the total
19 number of troops and the places where they are to be
20 stationed, and so forth.

21 Q Well, it is those factors that I am trying
22 to consider and we have considered some of them. Now,
23 this factor alone, if I understand you correctly, this
24 proposal alone was not unreasonable -- considered by
25 itself?

BALLANTINE

CROSS

1 A So far as I know, none of us reached any
2 conclusion in regard to this point by itself, or any
3 other point by itself.

4 Q Now, let me ask you whether in fact this was
5 not the first time during the conversations that the
6 Japanese side had made any mention of even accepting
7 the principle of eventual withdrawal of all troops
8 from China?

9 A I do not recall that. So far as I recall,
10 the principle of withdrawal of troops except for those
11 to be stationed for joint defense against communism
12 was accepted from the beginning.

13 Q Yes, but was this not the first time during
14 the conversations that the principle of eventual
15 withdrawal of the remaining troops had been stated
16 by the Japanese -- had been accepted by the Japanese?

17 A Possibly so.

18 Q Certainly then, this represented a concession
19 from the original view-point of Colonel IWAKURO; did it
20 not?

21 A Yes, but you have to balance that against
22 the new element of putting in troops for the same
23 purpose in Hainan Island.

24 Q Did Secretary Hull or other officials of the
25 Department raise the question of the stationing of

BALLANTINE

CROSS

1 troops in Hainan in conversations with the Japanese
2 Ambassador at this time?

3 A I do not recall that he did.

4 Q Then, apparently the question of stationing
5 of troops in Hainan was not, after all, so seriously
6 regarded by the Department of State?

7 A That doesn't follow at all.

8 Q The other points of difference were raised
9 by the Secretary, were they not, in conversations?

10 A He raised points about the general proposition,
11 yes.

12 Q Certainly this mass of conversations was about
13 particulars, was it not?

14 A I am talking about after November 7.

15 Q Let me ask you in passing; on this point of
16 stationing of troops in China by the Japanese, what
17 concessions, if any, did the United States ever offer
18 to make?

19 A The United States did not ask for any agree-
20 ment from Japan. We thought existing agreements would
21 take care of the situation if they were lived up to
22 by Japan. We adhered to our principles.

23

24

25

BALLANTINE

CROSS

1 Q Here is a subsidiary question, that of the
2 stationing of Japanese troops in Indo-China. The
3 original Japanese position which was maintained until
4 September was that the troops would be withdrawn from
5 Indo-China upon the conclusion of the China Affair, was
6 it not?

7 A That is right.

8 Q Meanwhile, however, the Japanese advance
9 into southern Indo-China occurred in July, and the
10 question of troops in southern Indo-China thereafter
11 was one of the most serious concerns in the conversa-
12 tions, was it not?

13 A That is correct.

14 Q The stationing of troops in northern Indo-
15 China, in and of itself, caused far less alarm than
16 the stationing of troops in southern Indo-China, did
17 it not?

18 A Well, the stationing of troops in Indo-China,
19 taking in conjunction all the circumstances and the
20 position where Japan was in a position to threaten
21 the Philippines and the other neighboring countries,
22 made it a much more serious matter.

23 Q Are we to understand that the Japanese never
24 made any concessions on the question of the stationing
25 of troops in Indo-China?

BALLANTINE

CROSS

1 A I think that is correct.

2 Q Did they not offer, by their proposal of the
3 27th of September, that they would not advance from
4 Indo-China except against China?

5 A Are you referring to the proposal of Septem-
6 ber 25, or September 6?

7 Q Yes, I am sorry, it is the 25th of September.

8 THE PRESIDENT: Well, don't get him to repeat
9 the evidence already given unless you are testing his
10 credibility.

11 MR. BLAKENEY: Well, sir, I am testing his
12 credibility, I suppose, because he said there were no
13 concessions and I am trying to point out in his own
14 evidence some things I think he will have to admit are
15 concessions, and perhaps he won't admit it.

16 THE WITNESS: Will you please repeat your
17 question?

18 Q Well, let's pass that one by and I will ask
19 you another one. I will ask you this, whether the
20 25th of September proposal by the Japanese did not
21 contain the new offer, now first made, to withdraw all
22 troops from China -- from Indo-China upon either the
23 settlement of the China Affair or the establishment
24 of an equitable peace in the Pacific?
25

 MR. KEENAN: Mr. President, the prosecution

BALLANTINE

CROSS

1 objects on the ground that obviously this document
2 speaks for itself if we are to keep these proceedings
3 within the bounds of reason.

4 THE PRESIDENT: We wish you to avoid reading
5 evidence already given. At the same time, although we
6 are bound to conduct a speedy trial, it is subject
7 always to conducting a just one. There can be no
8 more important witness in that box than a man who
9 purports to tell us the attitude of America on peace
10 and war at a critical period. If you confine your
11 cross-examination to getting from him what he knows
12 as to that attitude, we will not interfere.

13 Q The important word in my last question
14 was "new."

15 A What?

16 Q New.

17 A The new point there was an equitable peace
18 in the Far East. I don't think that adds anything
19 whatsoever to the other thing, because you couldn't
20 have an equitable peace in the Far East without a
21 settlement of the China Affair. Also, the term
22 "equitable" -- who is to decide which is to be
23 equitable? It was clearly implication that that was
24 to be unilaterally determined by Japan.

25 Q Was it not understood by the Department of

BALLANTINE

CROSS

1 State that the conclusion of this agreement which was
2 then under discussion would be considered by the
3 Japanese to be an equitable peace in the Pacific?

4 A We hadn't reached any meeting of minds at
5 all on the fundamental principles which were to
6 govern the peace in the Far East.

7 Q I understand that perfectly. But my question
8 is not that. Was it not the clear understanding
9 throughout these conversations, on both sides, that
10 if the conversations eventuated in an agreement, that
11 agreement would constitute the consummation of the
12 equitable peace in the Pacific?

13 A Of course, that is true; but that phrase,
14 that additional clause, added nothing to the situation.
15 It would have been the same whether that clause had
16 been added or not.

17 Q Well, I think we can leave that question to
18 be decided by the Tribunal.

19 Now, thereafter, on the 20th of November, the
20 Japanese presented their proposal for a modus vivendi
21 to which you refer in your affidavit on page 12,
22 paragraph 5, as being a proposal which on its face
23 was extreme. I want to ask you whether the offer in
24 that document, which is in evidence here as
25 exhibit 1245-H, to withdraw, upon the conclusion of

BALLANTINE

CROSS

1 the present agreement, all troops now stationed in
2 southern Indo-China, was not a totally new concession
3 from the Japanese side never before mentioned?

4 A If you can call it a concession; it is per-
5 fectly meaningless.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BALLANTINE

CROSS

G
o
l
d
b
e
r
g
&
S
p
e
c
i
a
l
a
t
t

1 Q Will you tell me why if, as you say, the
2 stationing of Japanese troops in southern Indo China
3 was a matter of such grave concern the Japanese
4 agreement to withdraw them forthwith upon the con-
5 clusion of the agreement was meaningless?

6 A I don't quite understand your question.

7 Q Why was it meaningless?

8 A Because there was no limit placed on the
9 number of Japanese troops that they could bring into
10 China. If they withdrew them from Southern Indo-
11 China to Northern Indo China, they could have brought
12 a 100,000 into northern Indo-China and brought those
13 troops back to southern Indo-China within a few days.

14 THE PRESIDENT: That appears in his affidavit.

15 Q Did not the Department of State consider that
16 the agreement to withdraw from southern Indo-China
17 included the agreement not to return there?

18 A There was no limit on the total number
19 of troops that Japan could put in Indo-China. They
20 could, if they were in a position to get back to
21 Southern Indo-China to threaten us.

22 THE PRESIDENT: Did I understand you to say
23 you treated this offer as insincere for two reasons,
24 the occupation of Hainan Island and the intercepted
25 messages?

BALLANTINE

CROSS

1 THE WITNESS: Yes.

2 Q Was the question of the number of troops
3 to be stationed in northern Indo-China even mentioned
4 by the Department of State to the Japanese Ambassa-
5 dors at the time of this proposal?

6 A I recall definitely that the point that
7 the troops could be brought back into southern Indo-
8 China in a day or two was mentioned, but I don't re-
9 call the fact whether there was no limit placed on
10 the number of troops stationed in northern Indo-China
11 was brought to their attention. The record will show
12 that, whether it was so or not.

13 Q Now, turning to the question of the pro-
14 posed insincerity of the Japanese proposal, as I
15 understand, the Department of State felt that the
16 Japanese offer was not made in good faith and that,
17 therefore, any agreement which might be made would
18 have no value; is that correct?

19 A To which offer are you now referring?

20 Q We are speaking of the 20th of November
21 proposal.

22 A Well, I had made no statement in regard to
23 that. I spoke about the November 7th.

24 Q I am sorry. I did not mean to misquote you.
25 Let me ask from what time did the Department

BALLANTINE

CROSS

1 of State feel that the Japanese were insincere on
2 their side of the conversations, from what time?

3 A It depends upon to what you are referring.
4 We certainly felt they were insincere in regard to
5 the question of withdrawal of troops as from November
6 7th. I don't recall that the question ever arose
7 specifically in regard to this November 20th proposal.

8 Q Well, as I understand, the thing which has oc-
9 curred to vitiate your belief in the Japanese sincerity
10 was knowledge of the interceded message of the 4th
11 of November, that is, message 726, which we have
12 mentioned before; is that correct?

13 A Yes.

14 Q Then may we assume that from that time
15 forward the Department of State had no confidence
16 in the Japanese sincerity?

17 A Naturally, we were on our guard from that
18 point on.

19 Q Would I then be correct if I said that from
20 that time on as far as the Department of State was
21 concerned you were not really negotiating because you
22 had no confidence that any agreement obtained would
23 be of any value?

24 A I don't think that is correct. We were on
25 our guard. We naturally wanted to have things,

BALLANTINE

CROSS

1 commitments provided, and we were unwilling to ac-
2 cept vague expressions, and we wanted dependable com-
3 mitments.

4 THE PRESIDENT: It was still possible for
5 the Japanese to give you evidence of good faith?

6 THE WITNESS: I think it would have been
7 still possible.

8 THE PRESIDENT: By withdrawing troops?

9 THE WITNESS: By withdrawing troops or any
10 other practical evidence of an intention to follow
11 peaceful courses.

12 Q Have you ever had occasion since that time
13 to see the Japanese original of this message No. 726?

14 A Is that the intercept to which you are re-
15 ferring?

16 Q Yes, it is.

17 A Yes, I did.

18 Q When did you see the Japanese, the copy?

19 A Some years later.

20 Q When you saw the Japanese copy did you
21 discover that numerous mistakes had been made in either
22 decryptographing or translating?

23 A As I recall now, I don't think I saw the whole
24 of the Japanese. I saw the first part that related to,
25 "This is our revised ultimatum."

BALLANTINE

CROSS

1 Q The message actually was in four parts, was
2 it not?

3 A Well, I don't recall now.

4 Q Then you did not read enough of the Japanese
5 copy so that you can confirm or deny that the original
6 Japanese is, in effect, a totally different document
7 from the intercept as it came to you in November, 1941?

8 A That is correct.

9 Q Now, let us turn briefly to the question of
10 non-discriminatory commercial intercourse throughout
11 the Pacific area, this being the third of the major
12 points of difference between the two nations. In order
13 to pass rapidly over the earlier stages of the con-
14 versation on this point, may I correctly state that
15 at various times a number of American suggestions for
16 amendment to the various Japanese proposals were ac-
17 cepted -- accepted, I mean, in the sense of being
18 embodied by the Japanese themselves in later draft
19 proposals?

20 A Some of the wordings were embodied, but they
21 were largely, in effect, nullified by the various
22 qualifications the Japanese put in; for example, the
23 applicability of the mutual guarantees of carrying on
24 economic activity by peaceful means was at first
25 limited in both the Japanese and American versions,

BALLANTINE

CROSS

1 was it not, to the Southwest Pacific area?

2 A Well, I haven't got the May 1931 draft be-
3 fore me. I don't recall definitely what our wording
4 was in our paper.

5 Q In any event, in the American draft of the
6 21st of June were not these guarantees for the first
7 time expressed as to be extended to the Pacific area
8 instead of the Southwest Pacific area? I refer to
9 exhibit 1092 in evidence.

10 A Yes, there the provision is for -- covers
11 the Pacific area.

12 Q Finally, after this question had remained un-
13 settled for some time, did not the Japanese Government
14 by this proposal of the 10th of November make the
15 following statement: "That the Japanese Government
16 recognizes the principle of non-discrimination in inter-
17 national commercial relations to be applied to all of
18 the Pacific areas, inclusive of China, on the understand-
19 ing that the principle in question is to be applied
20 uniformly to the rest of the entire world as well."
21 This is quoted from exhibit 1246 in evidence.

22 A That is correct.

23 Q On the same day, in conversation with Presi-
24 dent Roosevelt, did not Ambassador NOMURA point out to
25 the President that -- I quote -- "The Secretary of State
has repeatedly pointed out to me that it has been his

BALLANTINE

CROSS

1 long-cherished scheme to see the application of the
2 principle throughout the whole world.

3 Q Do you recall that?

4 A Yes, now that you recall it to my mind.

5 Q Do you know whether that had or had not been
6 the position of Secretary Hull as alleged by Ambassador
7 NOMURA?

8 A Would you mind reading that passage again for
9 me, please?

10 Q "The Secretary of State has repeatedly pointed
11 out that it has been his long-cherished scheme to see
12 the application of the principle throughout the whole
13 world."

14 A Yes, that was a consistent position of the
15 Secretary of State.

16 Q Nevertheless, do you remember that in his oral
17 statement handed to the Japanese Ambassador on the 15th
18 of November Secretary Hull pointed out that the last
19 sentence of the Japanese proposal sets forth a condi-
20 tion the meaning of which is not entirely clear?

21 The oral statement is to be found on page 734,
22 Volume II, Foreign Relations.

23 A That is correct.

24 Q "Which principle," he went on to say, "I assumed
25 was not meant to bind the United States to responsibility

BALLANTINE

CROSS

1 for practices outside of its jurisdiction, or practices
2 by other nations?

3 A That is correct.

4 Q Now, had not Japanese Minister WAKASUGI already
5 confirmed to you in a conversation held on the 13th of
6 November that this assumption of Secretary Hull was
7 correct?

8 A Well, I would have to have my memory refreshed
9 on that. If it is in the record it is correct.

10 Q Let me try to refresh your memory by reading
11 you the excerpt from the memorandum of this conversation
12 at page 730 of Volume II of Foreign Relations.

13 "Mr. WAKASUGI said that what the Japanese
14 Government meant" by this phrase in question "was that
15 the principle would be applied by the United States and
16 by Japan, and did not refer to the universal application
17 of those principles by all countries. Mr. Ballantine
18 asked whether this was not a very important point to
19 be brought out clearly and authoritatively."

20 Do you recall that conversation?

21 A I do.

22 Q Now, in view of those proposals and conver-
23 sations, did not the Department of State consider that
24 there had been a meeting of minds on this point subject
25 only to securing the authoritative, that is to say, the

BALLANTINE

CROSS

1 written provisions to that effect from the Japanese
2 Government?

3 A The fact of the matter is we never got a
4 reply to our memorandum of November 15, and KURUSU,
5 on November 18, made statements to the Secretary which
6 threw doubt on how far the Japanese Government could
7 ever go in the matter.

8 Q Will you tell us as well as you are able to
9 remember what those statements of Mr. KURUSU were?

10 A That statement is in the record of the memo-
11 randum of conversation. My recollection is that he
12 said that at the present time the Japanese Government
13 couldn't do anything about exchange controls that they
14 had imposed in China, that he could make no promises as
15 to what the Japanese Government could do after the war,
16 and that he made no definite reply when the Secretary of
17 State asked whether the Japanese Government could commit
18 itself in principle to those points.

19 I should prefer to have that taken directly
20 from the record, for I am not sure of my memory always.

21 THE PRESIDENT: We will adjourn now until half
22 past one.

23 (Whereupon, at 1200, a recess was taken.)
24
25

D. LLANTINE

CROSS

G
r
e
e
n
b
e
r
g
&
B
a
r
t
o
n

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Major Blakeney.

- - -

JOSEPH W. BALLANTINE, called as a witness on behalf of the prosecution, resumed the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BLAKENEY (Continued):

Q And then, after the occasion which we last spoke of, was there any further discussion of the question of non-discriminatory commercial intercourse?

A You mean after November 18?

Q Yes.

A I don't recall. I would have to refresh my mind on that.

Q Now, I wish to turn to another subject, that of modus vivendi. Before we embark on this, perhaps you had better describe the meaning of the term "modus vivendi" as it was used in these conversations.

THE PRESIDENT: It is not a technical term

BALLANTINE

CROSS

1 even in diplomatic negotiations. We do not want him
2 to tell us what it means.

3 Q The Japanese proposed modus vivendi of the
4 26th of November was given consideration by the
5 State Department or not? I mean, of course, the 20th
6 of November.

7 A Of course, it was given consideration. We
8 studied it very carefully.

9 Q Did it seem to offer to the State Department
10 any possibility of settlement of the current issues?

11 A It did not. Our observations on it are con-
12 tained in my affidavit.

13 Q The observation in your affidavit, of which
14 I should like to have your explanation, is that this
15 proposal on its face was extreme. That is, in saying
16 that it was extreme, do you mean what you have gone
17 on to say in your next paragraph, that is, your top
18 paragraph on page 13?

19 A Yes. I think that that statement on the top
20 of page 13 describes considerations that compelled us
21 to feel it was extreme.

22 Q Aside from those considerations, did you
23 feel that the Japanese, in presenting this modus
24 vivendi, were insincere as you did feel that they
25 were in presenting their immediately preceding

BALLANTINE

CROSS

1 proposal?

2 A This proposal acceptance by us would, we
3 thought, give Japan just what they wanted, what they
4 were seeking. It showed their position. It showed
5 their position. We had no reason to believe that
6 that would be unacceptable to them.

7 Q Was there objection on the part of the
8 Department of State to the principle or idea of a
9 modus vivendi at that time?

10 A No. If there was something that we could
11 have done that would have been practically possible,
12 that from our own consideration and the consideration
13 of other powers affected could have helped brought --
14 bring Japan into line and bring support in Japan to
15 a more peaceful course, we would have been very glad
16 to consider what we could have done. The record shows
17 that the Secretary of State told the Japanese that.

18 Q The United States Department had been making
19 it clear throughout the conversations, had it not,
20 that it would consult other interested governments
21 when, in its judgment, the time had come when that
22 would be profitable?

23 A We had made it clear to the Japanese repre-
24 sentatives that, when we thought there was a basis for
25 an agreement, then we would consult with the other

BALLANTINE

CROSS

1 powers.

2 Q In fact, had the other interested powers
3 been consulted prior to, say, the middle of
4 November?

5 A They had not been consulted in regard to
6 the contents of any proposed agreement. They knew
7 that conversations were taking place, but they had
8 not been consulted in regard to the contents of any-
9 thing, as far as I recall.

10 Q After receipt of the Japanese proposal of
11 the 20th of November, did not Secretary Hull on the
12 22nd meet with the Ambassadors of Great Britain,
13 China and the Netherlands and discuss the situation?

14 A I don't remember the exact date, but be-
15 tween -- somewhere between the 22nd and the 24th,
16 including the 24th, he did consult with them.

17 Q Was the Japanese modus vivendi proposal of
18 the 20th discussed at that time?

19 A I wasn't present at the conversations, and
20 I don't know -- with the other representatives, and
21 I do not know just what exactly was discussed; but
22 it will be in the record what the contents of those
23 discussions were.

24 Q Where does one find that record?

25 A That's all published in "Foreign Relations

BALLANTINE

CROSS

1 of the United States and Japan, 1931 - 1941,"
2 Volume II. I beg your pardon. I'd like to correct
3 that. It is in the Pearl Harbor record. I don't
4 think that those conversations with the other powers
5 were published at that time.

6 Q After that meeting of whatever date it may
7 have been, did the Department of State consider pre-
8 senting a modus vivendi of its own to Japan?

9 A Yes. Consideration was given in the Depart-
10 ment of State to the presentation of a modus vivendi.

11 Q Was it felt in the Department that a modus
12 vivendi plan could be drawn which might be acceptable
13 to Japan?

14 A No. We tried out the best we could do, but
15 we felt all along it was very short of what Japan
16 had been asking. The Japanese had indicated very
17 clearly that the November 20 proposal was their last
18 word, and they wouldn't take anything less than that;
19 and we thought it was extremely unlikely that they
20 would accept even the maximum that it might be pos-
21 sible for us to offer.

22 Q Nevertheless, did not the Department go so
23 far as to draft a proposal for such a modus vivendi?
24

25 A They made successive drafts of such a pro-
posal -- three successive drafts.

BALLANTINE

CROSS

1 Q Do you know whether these successive drafts
2 were discussed among the President, the Secretaries
3 of State, War and Navy, and the Chief of Staff of
4 the Army and Chief of Naval Operations?

5 A Yes. The whole plan of the proposed modus
6 vivendi was discussed.

7 Q Up until what date was it still not decided
8 whether the modus vivendi proposal would be presented?

9 A Certainly up to November 25.

10 Q Was it not, in fact, generally understood
11 in Washington among these officials whom I have
12 mentioned, as late as the 25th and, perhaps, even on
13 the morning of the 26th, that the modus vivendi
14 proposal would probably be offered to Japan?

15 A I don't know definitely what their under-
16 standing was and how long they understood that, but
17 they knew that we were considering it.

18 Q Do you know whether any of the drafts of
19 that modus vivendi proposal are published?

20 A They were all made public in the Pearl
21 Harbor Inquiry conducted by the Joint Committee.

22 Q If the Department of State considered the
23 Japanese proposal of the 20th an ultimatum, as I
24 believe you said it did, this was considered as a
25 reply to the ultimatum, was it not? That is not

BALLANTINE

CROSS

1 very clear. Let me add: In saying "this was the
2 reply," I mean, whatever was next presented to the
3 Japanese would be the reply.

4 A Yes. Our November 26th proposal was a
5 reply.

6 Q As a reply rejecting the ultimatum, which
7 you regarded the note of the 20th to be, it was,
8 in effect, the termination of the conversations,
9 was it not?

10 A I can't agree with that conclusion.

11 Q Well, let's investigate it a little: You
12 state on page 13, paragraph 3 of your affidavit that
13 "it subsequently appeared, the Japanese treated
14 the November 26 proposal as finally disposing of the
15 question of negotiating for a peaceful settlement."
16 How long subsequently did that appear so far as the
17 Department of State was advised?

18 A Well, we knew from the intercepts that the
19 Japanese Government regarded the conversations for
20 a peaceful settlement was over, but the Japanese were
21 told to keep up appearances as if the conversations
22 were still going on.

23 Q Then, from the date of receipt by the
24 Department of State of the intercepted message
25 No. 844 from Tokyo to Washington, dated the 28th of

BALLANTINE

CROSS

1 November, you had that information.

2 A That is correct.

3 Q As a rule, how long after transmission did
4 the Department of State receive these diplomatic
5 messages?

6 A I believe, on the face of those messages
7 it indicates the date of translation. We usually
8 got them within a day or two of the date of trans-
9 lation.

10 Q Well, now, however the Japanese treated the
11 United States message of the 26th of November, cer-
12 tainly the State Department knew that it did consti-
13 tute a rupture of negotiations or conversations, did
14 it not?

15 A You mean at what time?

16 Q I mean at the time of delivery of that note.

17 A No, I cannot agree with your conclusion
18 there.

19 Q Let me rephrase it. Perhaps I didn't make
20 it clear: Against the background of those months
21 of conversations, was not the inevitable effect of
22 the note of the 26th of November to terminate the
23 negotiations?
24

25 THE PRESIDENT: You are in the realm of
opinion again, Major Blakeney. What was the natural

BALLANTINE

CROSS

1 effect is for us, really.

2 MR. BLAKENEY: The original question was
3 prefaced by the words, "Was it not the belief of the
4 Department of State that." That is what I am asking
5 him. Not "what was the natural effect?" but "what
6 did the Department of State consider to be the
7 effect?"

8 THE PRESIDENT: You may ask him what the
9 Department thought or did.

10 BY MR. BLAKENEY (Continued):

11 Q Will you, then, state what the Department
12 thought on that question?

13 A The Department thought, as a result of the
14 months of conversation, that it was unlikely that
15 the Japanese Government would accept our proposal of
16 November 26; but there was always a chance, and the
17 proposal seemed to us of a character which any peace-
18 loving nation would have been glad to accept.

19 Q Did Secretary Hull state on the morning of
20 the 27th of November to Secretary of War Stimson
21 that "I have broken it off. Matters are now in the
22 hands of the Army and the Navy"?

23 A I think that's in the record. I'm not sure
24 of the exact wording he used, but he used wording
25 to indicate that he thought that the situation had

BALLANTINE

CROSS

1 become very serious.

2 Q Then do you know that Secretary Hull made
3 substantially similar statements on the following day
4 or days to the British Ambassador and to the American
5 War Council?

6 A Well, he made statements to the War Council
7 and to the British Ambassador on the following day
8 that he thought that Japan might break out at any
9 moment in some surprise attack at any point.

10 Q Yes. But, more specifically, do you know
11 that he made the statements on those days, in effect,
12 "I have washed my hands of the matter. It is in the
13 hands of the Army and the Navy."?

14 A I recall very clearly Mr. Hull saying to
15 me "within this present year," that he never used the
16 expression, "I have washed my hands of it."

17 Q Then, if Secretary Stimson testified that
18 he did, Secretary Stimson was mistaken, wasn't he?

19 MR. KEENAN: Mr. President, the prosecution
20 objects to that question as being improper.

21 THE PRESIDENT: To whom do you suggest Mr.
22 Hull made that statement?

23 MR. BLAKENEY: I suggest that the record
24 shows that he made it to Mr. Stimson.

25 THE PRESIDENT: You do not suggest he made

BALLANTINE

CROSS

1 it to the Japanese, do you?

2 MR. BLAKENEY: No, sir. That is not the
3 point at all. I was trying to determine the belief
4 of official Washington of the effect of the note of
5 the 26th. However, I do not think it worthwhile to
6 dispute over the exact word because there will be
7 abundant evidence later of what words were used.

8 THE PRESIDENT: You can ask him anything
9 he knows was said to Mr. Stimson or anything he
10 heard was said to him.

11 BY MR. BLAKENEY (Continued):

12 Q May I ask it this way, since I am not try-
13 ing to test your memory but just to get the facts:
14 Do you not know that it was the general viewpoint
15 among these high officials in Washington that the
16 note of the 26th of December -- of November could
17 only have the effect of breaking off negotiations
18 with Japan?

19 A I can be specific on one point. Mr. Hull
20 did say, "The matter is now in the hands of the Army
21 and Navy."

22 THE PRESIDENT: To whom did he say it?

23 THE WITNESS: He said that to a number of
24 high officials. He said it, I believe, to Mr.
25 Stimson, but he said it in the meeting of the War

BALLANTINE

CROSS

1 Council. Mr. Hull's best recollection of what he
2 said is contained in a letter that he wrote to
3 Justice Roberts on December 30, 1941, which is just
4 a few days after the event.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BALLANTINE

CROSS

G
o
l
d
b
e
r
g
&
S
p
r
a
t
t

1 Q During the months of August and September,
2 1941, was there not a discussion between the Japanese
3 and American negotiators concerned of a proposed meet-
4 ing between President Roosevelt and Premier KONOYE?

5 A That is correct.

6 Q President Roosevelt regarded this proposal
7 for a meeting as, in his words, "a step forward,"
8 did he not?

9 A I don't recall that statement, but it
10 probably may be in the record.

11 Q Would it refresh your recollection if I told
12 you that on the 28th of August, when the original
13 suggestion was delivered by the Ambassador of Japan
14 to the President for such a meeting, that that was the
15 President's reaction to it?

16 A I think that probably was his reaction because
17 even as late as 15th of December he told Congress that
18 he would have been glad to have traveled thousands of
19 miles to have effected an agreement with Japan.

20 Q The meeting never finally took place, did it?

21 A That is right. That is correct.

22 Q In explaining in your affidavit, page 11,
23 the American reasons for inability to adopt this
24 proposal, you dwell on the effects which might have
25 been expected to result from the failure of the

BALLANTINE

CROSS

1 proposed meeting. I am quite sure, however, that
2 equal consideration must have been given to the
3 prospects of success of such an extraordinary meeting
4 between the President and the Premier?

5 A We had given careful consideration to that,
6 but we had concluded that unless we reached an agree-
7 ment in advance on essential principles and their
8 application, that the meeting would result -- would
9 not be productive of results.

10 Q Especially since you say months of close-up
11 conversations with the Japanese Ambassador had failed
12 to produce results?

13 A That is correct.

14 Q Now I ask you whether this very fact was not
15 so much the more reason for making the effort through
16 this meeting of the highest responsible officials to
17 secure the concrete and clear-cut commitments from
18 Japan which were desired?

19 A The chances, in the light of the circumstances,
20 of getting anywhere when the Japanese had so clearly
21 failed to move on these fundamental points were so
22 dim that naturally we had to give important consider-
23 ation to what the effects would be if no agreement
24 resulted, and those effects seemed very certain.

25 Q Prince KONOYE was Premier at that time?

BALLANTINE

CROSS

1 A That is correct.

2 Q Was there a feeling in the State Department
3 that Prince KONOYE was a representative of a liberal --
4 moderate group in Japan which might be the best hope
5 for achieving the peace desired?

6 A What loomed largest in the consideration of
7 the Department of State was that the military party
8 was dominant in Japan.

9 Q Was the Department at that time aware
10 of the line of thought that the best way to destroy
11 the dominance of the military party was to encourage
12 the moderate party in some way?

13 A Yes, we had heard that before.

14 Q And the further suggestion that a measure of
15 agreement with the United States would probably be the
16 best means of establishing the moderates firmly in
17 control of Japan?

18 A That argument had also been brought up in
19 April by these friends, unofficial Japanese and American
20 friends, when these proposals were first brought to
21 us; but the proposals they brought did not seem to,
22 without considerable revision, to offer a prospect
23 for agreement.

24 Q In fact, such a meeting had been one of the
25 ingredients in the original draft of the 16th of April,

BALLANTINE

CROSS

1 had it not?

2 A That is correct.

3 Q So far as concerns the desirability of such
4 a meeting between the President and the Premier,
5 Ambassador Grew in Tokyo expressed to the Department,
6 did he not, a great enthusiasm for and hopefulness
7 concerning such a meeting?

8 A That is so; but he was only reporting from
9 the viewpoint of Tokyo as he himself stated.

10 Q And from the viewpoint of Tokyo did he not
11 feel that, in his own words: "The good which might
12 flow from such a meeting is incalculable"?

13 A There is no question about what Mr. Grew
14 reported in his telegram. It has been published.
15 It is in the record.

16 Q I should like to ask you also whether the
17 Department took into consideration this further sug-
18 gestion of Ambassador Grew contained in his long
19 telegram to the Department of the 29th of September
20 reviewing the whole situation, wherein, speaking of
21 the proposed meeting, he says this: He raises the
22 questions whether the United States is not now given
23 the opportunity to halt Japan's program without war
24 or an immediate risk of war; and, further, whether
25 through failure to use the present opportunity, the

BALLANTINE

CROSS

1 United States will not face a greatly increased risk
2 of war. The Ambassador states his firm belief in an
3 affirmative answer to these two questions?

4 A We gave capital consideration to that as well
5 as all other suggestions of Ambassador Grew.

6 Q Did the Department consider further at that
7 time the likelihood also referred to by Ambassador
8 Grew that Prince KOROYE would be in a position to
9 give to the President more directly explicit and
10 satisfactory engagements than his Ambassador could do?

11 A We did not see how -- what explicit commit-
12 ments that would be of a satisfactory character could
13 be given in the light of the failure to reach an
14 agreement on so many fundamental points during all
15 those months of conversation.

16 Q In any event, the meeting did not occur
17 because of the facts which you have stated in your
18 affidavit?

19 A And also for the many considerations stated
20 in our communication of October 2nd and in further
21 explanations made in the published record.

22 Q Then with the closing of the question of a
23 meeting between the President and Premier, the con-
24 versations were thrown back to the same state approximate-
25 ly in which they started, were they not?

BALLANTINE

CROSS

1 A We never closed the question of a meeting
2 with the Premier.

3 Q Well, perhaps I should have said, with the
4 final decision by the State Department to send its
5 answer to the proposal for a meeting?

6 A In our communication of October 2nd, we
7 indicated that we were still willing to have the
8 meeting, and we asked for further consideration to
9 be given to certain points that we mention in that
10 communication. We never got anything further back
11 on that point from the Japanese.

12 Q Now, returning to the 26th of November,
13 you say that despite the Japanese construction of
14 the note of that day, they kept up the appearance
15 of continuing negotiations right down to December 7th?

16 A That is correct.

17 Q In what way does your keeping up the appear-
18 ance of continuing negotiations differ from continuing
19 negotiations?

20 THE PRESIDENT: That answer will not help.
21 We know the difference.

22 Q Well, did the Japanese present additional
23 proposals of any nature?

24 A There was a conversation on December 21st
25 between -- well, there were conversations. I do not

BALLANTINE

CROSS

remember the exact dates, following November 26th.

1 Q At those conversations were additional
2 proposals of any nature presented by the Japanese?

3 A There was a proposal outstanding by us on
4 November 26th, and they intimated to us that a reply
5 would be received in due course.

6 Q Well, what in general was the subject matter
7 of the conversations after that date?

8 A Well, that is clearly recorded in the record.
9 I do not want to undertake to give a resume of that
10 thing offhand without reading over the record.

11 Q Well, I am not making any such demands on
12 you. I am just trying to find out in a general way
13 what went on, which you refer to as "keeping up the
14 appearance of continuing negotiations."

15 THE PRESIDENT: Were you influenced by their
16 demeanor or by the intercepted messages or by what
17 they were doing at Hainan?

18 THE WITNESS: We were influenced by the
19 intercepted messages.
20

21 Q Did any of those intercepted messages show
22 that additional proposals or propositions were received
23 from Tokyo to be delivered in the effort to conclude
24 negotiations?

25 A I do not recall definitely, but I am inclined

BALLANTINE

CROSS

1 to think not.

2 Q Did the Japanese Ambassador after that time
3 call upon the Department of State with additional
4 explanations of one point or another which had been
5 under discussion, and which they stated they had been
6 instructed by their Government to make?

7 A If I recall correctly, I think on December 2nd
8 the Japanese Minister suggested to the Under Secretary
9 of State that we go back to the original proposals
10 and counter-proposals. I may be wrong about that;
11 but, if I remember correctly, he made some such suggestion.

12 Q Did the Japanese Ambassador during that period
13 on at least one occasion state to the Department that
14 they had been instructed by Tokyo to request full re-
15 consideration by the American Government because the
16 state of affairs was so perilously close to disaster?

17 A I believe the Japanese Ambassador did say
18 he urged full reflection by the United States Government.
19 I do not recall the exact wording or the rest of it.

20 Q Were you aware from any of the intercepted
21 correspondence that the Japanese had arranged that, in
22 the event of a successful conclusion to the negotiations,
23 their fleet should be recalled and emergency military
24 measures canceled up to the actual moment of attack?

25 A I have no clear recollection of that.

BALLANTINE

CROSS

1 Q I believe that in your affidavit you do not
2 undertake to say why the Department of State considered
3 that the Japanese were pretending to continue negoti-
4 ations. Can you tell us what the Department's view
5 of that was?

6 A First, we had the information of the inter-
7 cepts; and secondly, by no positive act did the
8 Japanese indicate that there was any change in the
9 situation.

10 Q I am sorry. My question was not clear. The
11 question is this: Can you tell us whether the Depart-
12 ment of State formulated any belief as to the reason
13 why the Japanese were pretending to continue negotiations,
14 if they were only pretending?

15 A I think that that is one of the bases for the
16 conclusion by the Secretary of State that the Japanese
17 might break out in fresh acts of aggression at any
18 point over widely separated areas.

19 Q I am sorry. We are still not talking about
20 the same thing. The Department believed that the
21 Japanese were in bad faith, professing to be continuing
22 negotiations, is that correct?

23 A That is correct.

24 Q Now, for what reason did the Department believe
25 that the Japanese were doing that? What did they

BALLANTINE

CROSS

1 believe was the reason for which the Japanese were
2 doing it?

3 A I am sorry. I tried to make clear that they
4 were doing that for reasons that they were contemplating
5 fresh acts of aggression in their own chosen time.

6 Q And the negotiations, or the appearance of
7 negotiations, were designed, did you think, to conceal
8 the military preparations?

9 A Not to conceal military preparations. Those
10 had been obvious since July, this tremendous forward
11 movement from Japan southward into Indo-China to await
12 some chosen time for some act.

13 THE PRESIDENT: We will recess for fifteen
14 minutes.

15 (Whereupon, at 1445, a recess was
16 taken until 1500, after which the proceedings
17 were resumed as follows:)
18
19
20
21
22
23
24
25

BALLANTINE

CROSS

A
b
r
a
m
&
M
o
r
s
e

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 BY MR. BLAKENEY: (Continued)

5 Q After the decision was reached on the 25th
6 or 26th of November not to present the modus vivendi
7 proposal to Japan, but to present the note which was
8 finally delivered -- I am sorry, not after that, but
9 at the time your decision was reached, can you tell
10 me very briefly what were the reasons and considera-
11 tions underlying the American change of viewpoint as
12 represented by that note?

13 A I don't know what you mean by change of
14 viewpoint.

15 Q Did not the American note of the 26th of
16 November represent a departure from some of the
17 points of agreement which had been reached earlier
18 in the course of the conversations?

19 THE PRESIDENT: If you are referring to
20 earlier agreements in evidence, Major Blakeney, the
21 answer is for us to give, not the witness.

22 MR. BLAKENEY: I refer to the entire pre-
23 ceding body of documents, some of which are in evi-
24 dence, and conversations, very few, if any, of which
25 are in evidence.

BALLANTINE

CROSS

1 THE PRESIDENT: Yes?

2 MR. BLAKENEY: Shall he answer?

3 THE PRESIDENT: Yes.

4 A I think the reasons given for our November
5 26th communication are fully set forth in the ex-
6 planatory statement that accompanied it.

7 Q You refer, do you, to the oral statement
8 which is a part of exhibit "L" to your affidavit,
9 that is Court exhibit 1245-I?

10 A That's correct.

11 Q Coming to the message sent by the Presi-
12 dent of the United States on the 6th of December to
13 the Emperor of Japan, you are doubtless familiar
14 with the evidence already introduced in this trial
15 concerning the delay in the delivery of that message,
16 are you not?

17 A Only to the extent that there was a delay.
18 I don't know the details.

19 Q Was it the belief of the Department of
20 State that there would have been a difference in the
21 ultimate outcome if that message had been delivered
22 say ten hours earlier?

23 A So far as I know, there was no conclusion
24 reached on that point by the Department of State.

25 Q Is it a fact that the only concrete request

BALLANTINE

CROSS

1 or suggestion contained in that message was the
2 request that the Emperor should give thought to ways
3 of dispelling the dark clouds then prevailing?

4 MR. KEENAN: Mr. President, the prosecution
5 objects to this witness being asked to interpret for
6 the Court. That message speaks for itself.

7 MR. BLAKENEY: I will withdraw the question.
8 It is perhaps improper.

9 Q What did the Department of State consider
10 this message to contain in the way of a new proposal
11 designed to solve the differences between the two
12 countries?

13 THE PRESIDENT: The Department is bound by
14 its own words which we construe. Even the Department
15 cannot give it a meaning different from that which it
16 bears according to the words used.

17 MR. BLAKENEY: I point out, sir, that the
18 message is not that of the Department, but of the
19 President. I am trying to find out --

20 THE PRESIDENT: The same applies to him.

21 Q Did the Department draw this message, Mr.
22 Witness?

23 A The message was partly drafted in the White
24 House, partly in the State Department. There were
25 contributions by both sides.

BALLANTINE

CROSS

1 Q In contributing its advice, suggestions, or
2 whatever it did contribute to the drafting of the
3 message did the Department of State do so with con-
4 fidence that the message might have a chance of
5 achieving something towards settling the differences
6 between the two countries?

7 A We thought that the chances were very slim
8 that it would accomplish anything, but in view of the
9 desperate situation we did not want to overlook the
10 slightest chance.

11 Q Was the situation considered notably more
12 desperate on the 6th of December than on the 26th of
13 November?

14 A The Japanese fleet had already sailed from
15 that extreme southern part of Indo-China. We were
16 in imminent danger. The situation was right then
17 upon us.

18 Q When was that information available in the
19 Department of State?

20 A I believe it was about noon on the 6th.

21 Q At the time of the despatch of the President's
22 message were the authorities of the Department of
23 State and other departments already in possession of
24 the Japanese -- in possession of information that
25 the Japanese note which would constitute a de facto

BALLANTINE

CROSS

1 rupture of relations was on the way?

2 A Do you refer to the Japanese message of
3 December 7th, which was delivered on December 7th?

4 Q Yes. I am asking whether at the time
5 the President's message was despatched the Department
6 of State was aware that that Japanese message later
7 delivered on the 7th was on the way.

8 A I am sure that nobody in the State Department
9 or in the White House knew that at the time. I think
10 the Pearl Harbor record shows very conclusively that
11 we did not know about it.

12 Q Perhaps I can refresh your recollection by
13 suggesting to you that the record of the Pearl Har-
14 bor Committee to which you refer shows that by three
15 o'clock on the afternoon of the 6th the State Depart-
16 ment had the so-called pilot message, announcing the
17 imminent despatch of the final Japanese note -- of
18 what we later came to know as the final Japanese
19 note?

20 A That pilot message contained no hint of the
21 content of the note that finally came, and even then
22 the last part of the note, part 14, even that con-
23 tained nothing indicating a de facto rupture of
24 diplomatic relations.

25 Q Well, take one question at a time. Do you

BALLANTINE

CROSS

1 remember that the pilot message was available in the
2 State Department by three o'clock in the afternoon
3 of December 6th?

4 A I do not. I have no recollection of it,
5 but I do have a recollection that the Pearl Harbor
6 record indicated that it was received there at that
7 time.

8 Q And the so-called pilot message told you, did
9 it not, that a very long, the 14 part answer, to the
10 last American proposal was being sent?

11 MR. KEENAN: Mr. President, the prosecution
12 objects to this question and asks that the pilot
13 message be defined, especially in view of this last
14 question.

15 THE PRESIDENT: What do you understand by it,
16 Witness?

17 A I understand by a pilot message, was a
18 message to the effect that the Japanese Government's
19 answer was on its way.

20 Q And since reading the intercepted message
21 No. 844 of the 28th of November, which you pre-
22 viously testified to, did not the Department of
23 State know that when that answer came it would be as
24 reported in message 844, a de facto rupture of re-
25 lations?

BALLANTINE

CROSS

1 A That would only be an assumption and you
2 couldn't take a chance on assumptions in a very
3 critical situation like this.

4 Q I don't understand the assumption. I ask
5 you whether after reading that Japanese message,
6 stating that the answer would constitute a de facto
7 rupture of relations, the State Department did not
8 so understand it?

9 A Would you kindly read to me the text of
10 that pilot message?

11 MR. BLAKENEY: May I do so.

12 THE PRESIDENT: I didn't catch his last
13 answer.

14 MR. BLAKENEY: He requested me to read the
15 text of the pilot message and I will be glad to do
16 so, if the Tribunal desires.

17 THE PRESIDENT: Is it a long message?

18 MR. BLAKENEY: No, sir. It is quite short.

19 THE PRESIDENT: Well, he should recollect
20 what effect it had when they got it. It would be
21 difficult for him to forget a message like that.

22 (Whereupon, the Marshal of the Court
23 handed a paper to the witness.)

24 THE WITNESS: I don't see anything in that
25 message about a de facto rupture of relations with the

BALLANTINE

CROSS

1 United States.

2 THE PRESIDENT: Was that the message sent?

3 MR. BLAKENEY: I quoted that phrase from
4 message No. 844 of the 28th of November.

5 MR. KEENAN: Mr. President, is it clear to
6 the Court that there were two messages, one, I be-
7 lieve, a short message, that a message was coming
8 and secondly, the final note?

9 THE PRESIDENT: Clear as day, but Mr.
10 Blakeney should tender that pilot message if the
11 witness says that was the message received.

12 MR. BLAKENEY: I will be very glad to do so,
13 sir, except I haven't it abstracted for introduction.
14 I will tender it tomorrow.

15 THE PRESIDENT: Read it.

16 MR. BLAKENEY: heading from the Report of
17 the Congressional Committee Investigating Pearl Har-
18 bor, page 433:

19 "(1) The government has deliberated deeply
20 on the American proposal of the 26th of November, and
21 as a result we have drawn up a memorandum for the
22 United States contained in my separate message No.
23 902 (in English.)

24 "(2) This separate message is a very long one.
25 I will send it in 14 parts and I imagine you will

BALLANTINE

CROSS

1 receive it tomorrow. However, I am not sure. The
2 situation is extremely delicate and when you re-
3 ceive it I want you to please keep it secret for the
4 time being.

5 "(3) Concerning the time of presenting this
6 memorandum to the United States I will wire you in
7 a separate message."

8 THE PRESIDENT: That sounds familiar. It
9 may be already in evidence.

10 MR. BLAKENEY: Shall I read the remaining
11 one sentence.

12 THE PRESIDENT: Read the rest.

13 MR. BLAKENEY: (Reading)

14 "However, I want you in the meantime to put it
15 in nicely drafted form and make every preparation to
16 present it to the Americans just as soon as you re-
17 ceive instructions."

18 THE PRESIDENT: That message was to whom
19 from whom?

20 MR. BLAKENEY: Although it isn't shown in
21 the place from which I read it, I can state that it
22 was from Tokyo to the Ambassador in Washington.

23 THE PRESIDENT: My colleague tells me it
24 is exhibit 1216.

25 MR. BLAKENEY: I am informed also that the

BALLANTINE

CROSS

1 telegram No. 844 to which I have been referring is
2 exhibit No. 1193.
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BALLANTINE

CROSS

W
o
l
f
&
D
u
d
a

1 Q Now, Mr. Witness, my question was: The
2 President's message to the Japanese Emperor was sent,
3 was it not, some hours after this so-called pilot
4 message, exhibit 1216, was available in the Department
5 of State?

6 A Although the record apparently shows that
7 that pilot message was delivered to the Department of
8 State at 3 p.m. on the 6th, so far as I was able to
9 check up at the time of the Pearl Harbor inquiry, no
10 one of us had any definite recollection of having seen
11 it at that hour or at that time, nor have we any
12 definite recollection of when that message was received--
13 was seen by us.

14 Q Do you happen to know when the President's
15 message was sent?

16 A Message to the Emperor?

17 Q Yes.

18 A At nine o'clock.

19 Q Nine o'clock of the evening?

20 A That is in the affidavit.

21 Q Is it a fact that neither Secretary Hull,
22 Secretary Stimson, nor Secretary Knox had any con-
23 fidence in the prospect of achieving anything by that
24 message and attempted to dissuade the President from
25 sending it?

BALLANTINE

CROSS

1 THE PRESIDENT: How is that relevant or ma-
2 terial, Major Blakeney?

3 MR. BLAKENEY: There has been a great deal
4 made here in the prosecution's evidence of the ques-
5 tion of delay in delivery of the message. In the
6 opening statement of this phase of the case it was
7 stated that prompt delivery might have changed the course
8 of history. I think the intention with which the
9 message was drafted and sent and the belief or lack
10 of belief in its efficacy by those who were responsible
11 for it is quite material in view of that statement.

12 If the Tribunal is inclined to consider the
13 question of delay in delivery of the message as of no
14 importance, I have no further interest.

15 THE PRESIDENT: We are completely at a loss
16 to know how the delay in the Japanese post office in
17 Tokyo has any light thrown upon it by the opinions of
18 the three Cabinet Ministers you name.

19 MR. KEENAN: Mr. President, since there has
20 been interjected into this conversation the question
21 of the sincerity of the sender, who was the late
22 President of the United States, we respectfully ask
23 the Tribunal, irrespective of the exact materiality,
24 not to shut off any comment from the witness on this
25 point.

BALLANTINE

CROSS

1 THE PRESIDENT: We could only do that by the
2 agreement of both parties. We are confined to the
3 evidence which is relevant and material.

4 MR. KEENAN: I assume, Mr. President, there is
5 a purpose in the question -- if it is to challenge the
6 sincerity or the integrity of the President of the
7 United States, by whomever ~~made~~ ^{made} or where, I respectfully
8 request the Court to permit the question to be answered.

9 THE PRESIDENT: The genuineness of the message
10 certainly is material. You may ask any question
11 tending to show that it was not genuine.

12 But the real point about the delay is as stated
13 in a memorandum received from a colleague: "If it was
14 intentionally delayed, then it is suggested that he
15 who delayed it feared it might avert a war on which he
16 was determined."

17 I cannot see how the attitude of the three
18 Cabinet Ministers named bears on the sincerity of the
19 President or on the cause of the delay in Tokyo.

20 MR. BLAKENEY: If the only attempt to prove
21 is that whoever delayed the message thought that he was
22 averting a war, I have no interest. But I have been
23 attempting to elicit evidence from those best placed,
24 I should think, to know as to whether there was
25 actually any prospect that the delivery of this

BALLANTINE

CROSS

1 message at any time would have changed the course of
2 history. That is the charge we are trying to meet.

3 THE PRESIDENT: In other words, you are
4 asking him for an opinion which we think is beyond
5 his province.

6 MR. BLAKENEY: Very well.

7 Q Coming to the final Japanese note delivered
8 in Washington on the 7th of December, you say that it
9 was not a declaration of war with reasons or an ulti-
10 matum, and so forth. Upon first reading that note in
11 intercepted form at the White House on the night of
12 the 6th of December, do you know, did President Roose-
13 velt say, "This means war"?

14 A I know that one officer testified to that
15 effect.
16
17
18
19
20
21
22
23
24
25

BALLANTINE

CROSS

1 Q Do you know whether all high-ranking officials
2 in Washington concerned in the matter, specifically
3 the Secretaries of State, War, Navy and the Chiefs
4 of Staff, upon first reading this intercepted message
5 were of the same opinion.

6 A I do not know. Things were moving so fast
7 at that time. Many of the higher offices of the
8 Government didn't receive the intercepts in time. By
9 the time that we received the message from the Japanese
10 Pearl Harbor had already happened.

11 Q When did the Department of State first receive
12 the intercepted copy of that message?

13 A Well, Part 14 I would say somewhere around ten
14 o'clock. I didn't see any of it before that time.

15 Q Ten o'clock a.m. or p.m. of what day?

16 A Ten o'clock a.m. on the 7th.

17 Q Did the intercepted message which was delivered
18 to the White House on the evening of the 6th of December
19 include Part 14?

20 A I think that the record will show that Part
21 14 wasn't even received or decoded until the early
22 morning hours of the 7th.

23 Q Then, if the President of the United States
24 formed his judgement of the effect of the note with-
25 out seeing Part 14, is it correct to say that the first

BALLANTINE

CROSS

1 13 parts of the note in effect -- the first 13 parts
2 of the note gave the impression that war was inevitable?

3 A It would be difficult for me to answer that.
4 I mean, I can only speak for myself, because I didn't
5 compare notes. I can only give my own opinion, if
6 that is of any use.

7 Q Did you know that even before the delivery
8 to the Japanese of the United States note of the 26th
9 of November that the President and other high officials
10 in Washington were expecting hostilities with Japan,
11 perhaps as early as the first of December?

12 MR. KEENAN: Mr. President, the prosecution
13 objects to that question. It might be that the people
14 in the United States expected to be attacked by Japan
15 for many, many years before, but that is not the issue
16 before this Court.

17 THE PRESIDENT: He is asked whether he knew
18 whether the President and others expected an attack.
19 He may answer.

20 A All I know is what the Secretary of State said;
21 that Japan might be -- was apt to break out in an
22 attack in any direction.

23 Q As you and the State Department read inter-
24 cepted Japanese diplomatic messages from about the 28th
25 of November, did it not become increasingly clear that

BALLANTINE

CROSS

1 whatever note might eventually be delivered by Japan
2 would probably be the last and would mean war?

3 A Not necessarily. I mean it was a very strong
4 likelihood of that, but it was not one hundred per
5 cent conclusions. I'd like to explain that it wouldn't
6 be the note that would mean war, it was the general
7 situation, the forward movement that was going on --
8 the heavy troop movement down southward, all those
9 signs. It wasn't a question of a note, it was the
10 question of a situation.

11 Q Nevertheless, when you knew that a note was
12 coming which would have the effect of rupturing
13 negotiations, was not the appearance of that note
14 considered of especial significance?

15 A Characteristics of that note were very well
16 described by the Secretary of State to the Japanese
17 Ambassadors.

18 Q Now, I am not asking you about the characteristics
19 of it, I am asking you whether in the situation as it
20 then stood, the arrival of a note of that character
21 breaking off negotiations certainly did not indicate
22 war?

23 THE PRESIDENT: He can tell us only what the
24 American authorities thought, not what he personally
25 thinks.

BALLANTINE

CROSS

1 A I think in the minds of many of the American
2 authorities the note was connected with the dispatch
3 of this large Japanese armada which had sailed
4 a day previous and of which we had gotten word on the
5 noon of the 6th -- this huge armada which was sailing
6 southward or westward in the general direction towards
7 British or American or Dutch territories. I am sure
8 that Mr. Hull has testified to that effect.

9 Q Well, that is just what I mean, that in the
10 situation as it had then developed, the Japanese note
11 intercepted and available some time on the 6th, regard-
12 less of its wording, actually constituted, and was
13 understood by the American high authorities to constitute
14 a declaration of war, did it not?

15 A I don't know that any American officials
16 expressed the opinion that it constituted a declaration
17 of war. Things were happening so fast at that time; this
18 armada had already sailed.

19 Q Now, as to the delivery of that note to the
20 Department of State, you have made the point in your
21 affidavit that it was delivered to Secretary Hull at
22 a time which was after the attack on Pearl Harbor. Are
23 you aware of the fact from reading intercepted diplomatic
24 correspondence that it was the direction of the Japanese
25 Foreign Office to Ambassador NOMURA that the note should

BALLANTINE

CROSS

1 be delivered at 1 p.m. in Washington?

2 A Yes, we saw the intercept on the morning
3 of the 7th that the direction said it should be
4 delivered at 1 p.m.

5 THE PRESIDENT: We will adjourn until half
6 past nine tomorrow morning.

7 (Whereupon, at 1600 the proceedings
8 were adjourned until Thursday, 21 November 1946
9 at 0930.)

10 - - - -
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25